

**MEMORANDUM OF UNDERSTANDING AMONG
NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
AND THE
U.S. BUREAU OF LAND MANAGEMENT, NEW MEXICO STATE OFFICE AND
THE U.S.D.A. FOREST SERVICE, SOUTHWESTERN REGION
CONCERNING
EXPLORATION AND MINING OF FEDERAL LOCATABLE MINERALS
IN NEW MEXICO**

This Memorandum of Understanding (MOU), is entered into among the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department (EMNRD), the U.S. Bureau of Land Management, New Mexico State Office (BLM) and the U.S.D.A. Forest Service, Southwestern Region (USFS) pursuant to Section 307(b) of the Federal Land Policy and Management Act of 1976, (90 STAT 2766, 43 USC 1737 et seq.) and the Organic Administration Act of June 4, 1897 (30 STAT 36, 16 USC 478 and 551). This MOU supercedes and terminates MOU/JPA EMNRD No. 97-521-0600-0183; BLM No. 1422G910-MOU-9711; and USFS No. 16-R3-97-0009.

A. PURPOSE

This MOU establishes cooperative procedures among EMNRD, USFS and BLM for the surface management, utilization, and reclamation of lands affected by exploration and mining of federally-owned locatable minerals within the State of New Mexico. It provides for the most efficient use of each agency's resources and the reduction of duplicative requirements.

B. AUTHORITIES

1. EMNRD's authority to enter into and implement this MOU is the New Mexico Mining Act, NMSA 1978, Sections 69-36-1 to 69-36-20, specifically including NMSA 1978, Section 69-36-9, and the New Mexico Mining Act Rules, 19.10 NMAC.
2. BLM's authority to enter into and implement this MOU is Title 43 of the Code of Federal Regulations, Subparts 3802 and 3809, "Surface Management Under the General Mining Laws."
3. USFS's authority to enter into and implement this MOU is Title 36 of the Code of Federal Regulations, Part 228, Subpart A, "Locatable Minerals."

C. SCOPE

This MOU shall be conducted with consideration for: (1) multiple use and sustained yield of resources and environmental protection; (2) all other program activities of the agencies involved; and, (3) consistency with state, local, and federal land use plans and zoning ordinances, so long as rights granted under the General Mining Law of 1872 are preserved.

D. DEFINITIONS

1. Casual Use: Under federal regulations, activities that result in no or negligible disturbance to the land or resources and generally involve hand tools.
2. Cessation Order (CO): Under EMNRD rules, an order requiring an operator to cease operations for certain violations or for failure to complete abatement requirements of a Notice of Violation.
3. Closeout Plan: Under EMNRD rules, a detailed description of proposed reclamation and end-use submitted as part of some Permit applications.
4. Financial Assurance (also Financial Guarantee or Bonding): The monetary obligation against the inability or refusal of an operator or permittee to comply with reclamation requirements. Operational thresholds requiring financial assurance differ among the three agencies.
5. Locatable Minerals: Federally-owned minerals (generally, but not exclusively, metallic or “hardrock” minerals) that may be explored for and mined under the authority of the General Mining Law of 1872, as amended.
6. Notice (BLM): Submitted by an operator for proposed exploration operations that are greater than casual use and that will cause surface disturbance of 5 acres or less.
7. Notice of Intent (USFS): Referred to as a “Notice” in this document. Submitted by an operator for proposed exploration or mining operations determined not likely to cause significant disturbance of surface resources.
8. Noncompliance Order (NO): An order issued by BLM for noncompliance with BLM regulations or any provision of a Notice or Plan. Failure to timely comply may result in a Suspension Order.
9. Notice of Noncompliance (NON): A notice issued by USFS for noncompliance with USFS regulations or the terms of a Plan of Operations.
10. Notice of Violation (NOV): A notice issued by EMNRD for a violation under its rules. The NOV may result in a monetary assessment. Failure to comply with a NOV may result in a cessation order.
11. Operations: For federal locatable minerals, all functions, work, and activities in connection with prospecting, exploration, development, mining or processing, reclamation and all uses reasonably incident thereto.
12. Operator: As defined in federal regulations, an entity conducting or proposing to conduct operations.
13. Permit: Under EMNRD rules, required to be applied for and approved for the conduct of operations. There are seven Permits: General, Exploration Operations, Existing Mining Operations, New Mining Operations, Minimal Impact Exploration Operations, Minimal Impact Existing Mining Operations, and Minimal Impact New Mining Operations.
14. Permittee: Under EMNRD rules, the person or entity issued a permit.
15. Plan of Operations (BLM): Submitted by an operator for proposed mining operations that exceed casual use; for exploration operations that disturb over 5 acres; for bulk sampling of 1,000 tons or more; and for all operations that exceed casual use within certain special status areas.
16. Plan of Operations (USFS): Submitted by an operator for operations that will likely cause significant disturbance of surface resources.

17. Suspension Order (SO): An order issued to an operator under the BLM regulations for failure to timely comply with a Noncompliance Order. An immediate suspension may be issued without a Noncompliance Order under certain circumstances.

E. PROCESSING PROCEDURES

1. The agency first contacted (EMNRD or federal agency) will advise the permittee/operator:

A. That there are separate federal and EMNRD requirements, as follows: a Permit under EMNRD rules; and Casual Use, a Notice, or a Plan under BLM or USFS regulations.

B. Provide copies of appropriate federal and EMNRD rules, regulations and forms or inform the permittee/operator where they may be obtained.

C. The location where the required federal and EMNRD information is to be sent.

D. That the information required by EMNRD may be separately provided to EMNRD and the information required by the federal agency may be separately provided to the federal agency, or the information may be consolidated and submitted to both.

2. Each agency will coordinate their processing with the other affected agency or agencies through the transmittal of copies of correspondence sent to the permittee/operator, electronic mail, telephone calls and/or meetings. At a minimum, each agency shall notify the other:

A. Upon receipt of a State Permit application, or a Federal Notice or Plan.

B. When a Permit, Notice or Plan is approved or acknowledged.

3. An approved EMNRD General Permit for suction dredging operations may be submitted to BLM as authorization for such operations under BLM regulations, subject to BLM financial assurance requirements.

F. FINANCIAL ASSURANCE

1. The agency first contacted (EMNRD or federal agency) shall advise the permittee/operator:

A. That the EMNRD and the federal agencies have different operational thresholds for financial assurance.

B. That if one agency requires financial assurance and the other(s) does not, financial assurance shall be obtained that meets that agency's requirements.

C. That if all affected agencies require financial assurance, financial assurance that covers both (all) requirements shall be necessary.

2. If financial assurance is required under both EMNRD rules and the federal agency regulations, a single financial instrument is preferred.

3. Financial assurance, held as one instrument, intended to fulfill both EMNRD and federal agency requirements (joint financial assurance) must meet the following:

A. Financial assurance must meet both federal and state requirements as to amount, type, terms and conditions and be redeemable by both the federal agency or agencies and the state.

B. The amount, type, terms and conditions shall be jointly concurred with by EMNRD and the affected federal agency or agencies.

C. The amount, type, terms and conditions may not be adjusted without concurrence of the federal agency or agencies and EMNRD.

D. Joint financial assurance or portions thereof shall not be released without concurrence of the federal agency or agencies and the EMNRD.

E. If an agency finds it necessary to proceed with forfeiture of all or a portion of the joint financial assurance according to that agency's rules or regulations, the agency, prior to taking any formal action, shall obtain concurrence of the other affected agency or agencies.

4. If a permittee/operator has financial assurance with only one agency or holds separate financial assurance instruments with more than one agency, and an agency finds it necessary to proceed with forfeiture of all or a portion of that agency's financial assurance, the agency, prior to taking any formal action, shall notify the other agency or agencies.

G. COORDINATION WITH OTHER AGENCIES

Other regulatory agencies may need to review Federal Notices or Plans or EMNRD permit applications for compliance with their rules and may require their own authorizations. The USFS, BLM and EMNRD shall coordinate with these other agencies.

H. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The federal agencies are responsible for compliance with the requirements of the National Environmental Policy Act (NEPA). EMNRD shall cooperate with the

federal agencies in the preparation of NEPA documents to the extent possible within state law.

I. INSPECTIONS

1. Before an official inspection of operations is conducted by either the federal agency or EMNRD, the inspecting agency will notify the other(s) that an inspection is to be conducted. Inspections shall be jointly conducted whenever possible.

2. Copies of reports or permittee/operator correspondence involving inspections of federal locatable mineral operations will be sent by the inspecting agency to the other affected agency or agencies, if requested.

J. ENFORCEMENT

1. Whether discovered separately or jointly, the federal agency and EMNRD shall promptly discuss the nature of all suspected violations to determine if the operator is in noncompliance with federal, state, or both agencies' rules, regulations, or standards.

2. Enforcement action for a violation determined to be unique to federal regulations/standards or unique to EMNRD rules/standards shall be pursued solely by the affected agency under its own rules or regulations (i.e., the federal agency issues a NO or NON; EMNRD issues a NOV). The issuing agency shall advise the other affected agency or agencies.

3. If it is determined that a violation is common to both EMNRD and the Federal agency rules, regulations, or standards, the violation may be:

A. Pursued separately by EMNRD and by the federal agency (i.e., the federal agency issues a NO or NON; EMNRD issues a NOV). Each agency shall forward a copy of the violation notice to the other and notify the other when compliance is obtained.

B. Pursued solely by EMNRD under EMNRD rules (i.e., EMNRD issues a NOV, the federal agency does not issue a NO or NON). A copy of the NOV shall be forwarded to the federal agency. EMNRD and the federal agency shall coordinate follow-up inspections to determine compliance. EMNRD shall notify the federal agency when compliance is obtained.

C. Pursued solely by the federal agency under federal agency rules (i.e., the federal agency issues a NO or NON, EMNRD does not issue an NOV). The federal agency shall forward a copy of the NO or NON to EMNRD. EMNRD and the federal agency shall coordinate follow-up inspections to determine compliance. The federal agency shall notify EMNRD when compliance is obtained.

4. No agency shall issue a CO or SO or pursue court action pursuant to noncompliance against a permittee/operator without notifying the other agency or agencies.

K. PUBLIC NOTIFICATION AND PARTICIPATION

Each agency shall initiate notification and public participation requirements under its own rules or regulations and, to the maximum extent possible, issue joint notifications and conduct joint meetings and/or hearings that satisfy both federal and state requirements.

L. COORDINATION

1. BLM, USFS and EMNRD representatives shall meet, at a minimum, once a year to discuss operations administered under this MOU. Sponsorship of each meeting shall rotate among the three agencies. Each meeting shall have a set agenda addressing, at a minimum, the status of all active and pending operations, inspections and enforcement.

2. Each agency shall promptly inform the other agencies of any changes in rules, regulations, or policy that would affect the provisions of this MOU.

3. For proposed changes to this MOU or questions of interpretation the following contacts must be notified

BLM—	State Geologist, Santa Fe
USFS--	Regional Geologist, Albuquerque
EMNRD	Bureau Chief, Mine Regulatory Bureau

M. DISAGREEMENTS

When there is a disagreement between agencies as to any procedure under this MOU, negotiations will be undertaken to resolve the disagreement, including involvement of the signatories of this MOU, if necessary. These negotiations shall not restrict an agency from taking action in accordance with its authority.

N EXCEPTIONS

An exception may be allowed to any part of this MOU if approved in writing by the signatories of the agencies involved.

O. LIMITATIONS AND APPROPRIATIONS

1. Nothing in this MOU shall be construed as increasing, limiting, or modifying, in any way, the statutory or regulatory authorities and responsibilities of EMNRD, BLM, or USFS, or bind them to perform beyond their respective authorities, or

require any agency to assume or expend any sum of money in excess of available appropriations.

2. The terms of this MOU are contingent upon sufficient appropriations and authorization by the New Mexico State Legislature, U.S. Congress, and the U.S. Departments of Interior and Agriculture for the performance hereof. If sufficient appropriations and authorization are not made, this MOU shall terminate upon written notice from the affected agency to the other agencies in accordance with Section S.

P. AMENDMENT OR CHANGE

This MOU shall not be altered, changed, or amended except by instrument in writing executed by all parties hereto.

Q. EFFECTIVE DATE AND TERMINATION

This MOU shall be deemed effective on January 20, 2004, and shall remain in force until January 20, 2009, unless terminated by any agency through written notice to the other agencies 60 days prior to the intended date of termination. By such termination, no party may nullify or avoid any obligation required to be performed prior to termination.

T. CREATION OF RIGHT, BENEFIT OR TRUST RESPONSIBILITY

This MOU is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

IN WITNESS WHEREOF, the parties have herein below set their hand.

**STATE OF NEW MEXICO,
ENERGY, MINERALS, AND
NATURAL RESOURCES DEPARTMENT**

**U.S. BUREAU OF LAND
MANAGEMENT
NEW MEXICO STATE OFFICE**

By: /s/ Robert E. Castillo
Robert E. Castillo
Administrative Services Division Director

By: /s/ Linda S.C. Rundell
State Director

Date: 1/16/2004

Date: 2/19/2004

**U.S. FOREST SERVICE,
SOUTHWESTERN REGION**

By: /s/ Lucia M. Turner
For Regional Forester

Date: 2/02/2004